

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) TKX-7057US	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____		Application Number 09/776,040	Filed 2/1/2001
		First Named Inventor Ehrhardt, et al.	
		Art Unit 2174	Examiner Peng Ke
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor. _____ Signature /Michael J. Fogarty, III/ _____ Typed or printed name Michael J. Fogarty, III _____ Telephone number 972-732-1001 _____ Date March 5, 2009</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number 42,541 _____</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<input checked="" type="checkbox"/> *Total of 1 forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Ehrhardt, et al.	Docket No.:	TKX-7057US
Serial No.:	09/776,040	Art Unit:	2174
Filed:	February 1, 2001	Examiner:	Ke, Peng
For:	Setting up a Communication Procedure between Instances and a Protocol Tester Using the Method		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF AND REQUEST FOR REVIEW

Dear Sir:

Pending claims 1-20 have been rejected in the Final Office Action mailed December 10, 2008 ("Final Action"). Applicant filed a Response Under 37 C.F.R. § 1.116 on February 6, 2009 ("After Final Response"). The Examiner subsequently issued an Advisory Action on March 2, 2009, which maintained the rejections in the Final Action.

Claims 1-3, 5-10, 13, 14, 17, 19 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,732,213 to Gessel (hereinafter "Gessel") in view of U.S. Patent No. 5,027,343 to Chan et al. (hereinafter "Chan"). Claims 4, 11, 15, 16 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gessel in view of Chan in view of U.S. Patent No. 6,560,723 to Matsui (hereinafter "Matsui"). However, the claims include limitations that are not taught or suggested by the cited references. Since these limitations are not shown in the references alone, they are not taught or suggested by the proposed combination of references. Therefore, the claims are not obvious and should be allowed.

I. The Advisory Action failed to address all issues raised in the After Final Response

In the After Final Response, Applicant objected to the combination of the Gessel and Chan references. (Response at 9). Applicant also identified claim elements that are missing

from the proposed combination of the Gessel and Chan references. (Response at 10). The Advisory Action responded only to Applicants remarks regarding the proposed combination, but failed to address the missing claim elements. (See, Advisory Action at continuation sheet).

II. The cited references do not teach or suggest each and every element of the pending claims.

The Gessel and Chan references do not teach or suggest a protocol tester for which the user selects protocol layers, service access points, or communication data from a display.

Claim 1 recites:

selecting a protocol layer . . . , the protocol layer **selected from a displayed list** of protocol layers that are capable of being emulated by the protocol tester . . . ;

selecting abstract communication interfaces . . . , the abstract communication interfaces **selected from a displayed list** of abstract communication interfaces associated with the selected protocol layer; . . . and

automatically setting up through the protocol tester the communication procedure on the basis of the selections made in the above selecting steps, with parameters for the abstract communications interfaces and the communication data **selecting steps being made graphically**.

(emphasis added).

Claim 8 recites:

means for displaying a list of protocol layers capable of being emulated by the protocol tester, . . . ;

means for displaying a list of abstract communication interfaces for the communication procedure, the list of abstract communication interfaces associated with the selected protocol layer to be emulated; . . . and

means for automatically setting up the communication procedure through the protocol tester on the basis of the selections of the various selecting means, with parameters for the abstract communication interfaces and the communication data **selecting means being made graphically**.

(emphasis added).

Claim 20 recites:

means for graphically selecting devices to be used in a communication procedure, a first being the protocol tester and a second device being an item under test;

means for displaying a list of protocol layers capable of being emulated by the protocol tester, . . . ;

means for graphically selecting a protocol layer to be emulated by the protocol tester for testing a specified protocol layer of the item under test;

means for displaying a list of service access points for the communication procedure, the list of service access points interfaces associated with the selected protocol layer;

means for graphically selecting service access points of the protocol layer to be emulated for the communication procedure;

means for graphically selecting communication data to be exchanged at the service access points, the communication data contained in description files

. . .

(emphasis added).

The Gessel patent discloses a visual network display that allows a user to select nodes to be tested. (Fig. 12; col. 10, lns. 43-58). Gessel does not teach or suggest that test parameters may be selected from a displayed list, such as a protocol layer, abstract communication interface, service access points, or communication data. Moreover, Gessel does not teach or suggest that a displayed list of abstract communication interfaces or service access points interfaces are “associated with a selected protocol layer” as required in the claims.

Applicant noted in the Amendment filed September 24, 2008, that the Gessel reference does not teach or suggest displaying a list of abstract communication interfaces or a list of service access points and allowing a user to select abstract communication interfaces or a list of service access points for a communication procedure. The subsequent Final Action failed to specifically identify where the claimed display and selection limitations could be found in the cited references. Applicant raised this issue again in the After Final Response, but it was not addressed in the Advisory Action. (Response at 11).

The Chan reference also fails to teach or suggest the above-indicated elements of claims 1, 8 and 20.

Columns 3 and 4 of the Chan reference are cited at page 3 of the Final Action as disclosing a “protocol layer selected from a displayed list of protocol layers.” However, upon review of the cited Chan disclosure, it is apparent that Chan fails to either (1) display a list of protocol layers, or (2) allow the user to select a protocol layer from such a displayed list.

Moreover, the Chan Figures and specification do not teach or suggest a user interface for displaying and selecting protocol layers.

The Matsui reference was not cited for the claim elements highlighted above.

Accordingly, the cited Gessel and Chan references and the proposed combination of Gessel, Chan and/or Matsui fail to teach or suggest all of the elements of independent claims 1, 8, and 20. Applicant respectfully requests that the Examiner withdraw the current rejections and pass the claims to allowance.

Applicant previously identified the deficiencies in Gessel, Chan and Matsui references the After Final Response at pages 10-12. The Final Action and Advisory failed to address Applicant's objections to the Gessel reference with respect to these features of the pending claims.

III. Conclusion

In view of the above, Applicant respectfully requests allowance of the present application.

Respectfully submitted,

March 5, 2009

Date

/Michael J. Fogarty, III/

Michael J. Fogarty, III
Attorney for Applicant
Reg. No. 42,541

SLATER & MATSIL, L.L.P.
17950 Preston Rd., Suite 1000
Dallas, Texas 75252
Tel.: 972-732-1001
Fax: 972-732-9218